

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 17th Floor
Sacramento, California 95814**

RH03027484

August 27, 2003

**NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING
REGARDING NON-RESIDENT SURPLUS LINE BROKER RECORD KEEPING**

SUBJECT OF HEARING

California Insurance Commissioner John Garamendi will hold a public hearing regarding the permanent adoption of emergency regulations pertaining to surplus line broker and special lines' surplus lines broker record keeping requirements. The Insurance Commissioner ("Commissioner") adopted the regulations on an emergency basis as ER03027484, effective July 14, 2003. The regulations are codified in Title 10, Chapter 5, Subchapter 1, Article 7, Sections 2190 through 2190.8, California Code of Regulations ("CCR").

Effective January 1, 2003, Assembly Bill 2984, Chapter 203, Statutes of 2002, authorizes the issuance of a surplus line broker and special lines' surplus lines broker license to non-residents that is equal in scope to that of residents. To effectively regulate the activities of these non-resident licensees, the Commissioner must establish record keeping requirements for the insurance transacted on California risks. Current record keeping regulations set forth in Title 10, California Code of Regulations, Sections 2190 through 2190.8 apply only to resident surplus line brokers and resident special lines' surplus lines brokers.

AUTHORITY AND REFERENCE

The Insurance Commissioner proposes the adoption of these regulations pursuant to the authority vested in him by Section 1768 of the California Insurance Code. California Insurance Code Section 1768 provides for the promulgation of reasonable rules and regulations specifying the manner and type of records to be maintained by surplus line brokers and the locations where those records shall be kept. The purpose of these regulations is to implement, interpret, and make specific the provisions of California Insurance Code (CIC), Division 1, Part 2, Chapter 6, Sections 1767 and 1768.

HEARING DATE AND LOCATION

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed regulations at the following date, time, and place:

Date and Time: **October 28, 2003**
 10:00 a.m. to 12:00 p.m.

Location: **45 Fremont Street**
 22nd Floor Hearing Room
 San Francisco, California 94105

ACCESS TO HEARING ROOM

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) for this hearing in order to make special arrangements, if necessary.

WRITTEN AND/OR ORAL COMMENTS: AGENCY CONTACT PERSON

All persons are invited to submit written comments to the Insurance Commissioner on the proposed regulations prior to the public comment deadline. Comments should be addressed to the contact person for this proceeding:

Denise Yuponce, Staff Counsel
California Department of Insurance
Compliance Bureau
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
Yuponced@insurance.ca.gov
Telephone: (916) 492-3171
Facsimile: (916) 324-1883

The backup agency contact person for this proceeding will be:

Reid McClaran, Assistant Chief Counsel
California Department of Insurance
Compliance Bureau
300 Capitol Mall, 17th Floor
Sacramento, CA
Mcclaranr@insurance.ca.gov
Telephone: (916) 492-3500
Facsimile: (916) 324-1883

All persons are invited to present oral and/or written testimony at the scheduled public hearing.

DEADLINE FOR WRITTEN COMMENTS

All written materials, unless submitted at the hearing, must be **received** by the Insurance Commissioner at the address listed above **no later than 5:00 p.m. on October 28, 2003**. Any written materials received after that time will not be considered. Written comments may also be submitted to the contact person by e-mail and facsimile transmission. Please select only one method to submit written comments.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interest of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of California Code of Regulations, Title 10, Sections 2662.1-2662.6 in connection with their participation in this matter. Interested persons must submit a Petition to Participate, as specified in California Code of Regulations, Title 10, Section 2661.4. The Petition to Participate must be submitted to the Commissioner at the Office of the Public Advisor at the following address:

California Department of Insurance
Office of the Public Advisor
300 Capitol Mall, Suite 1700
Sacramento, CA 95814
Telephone: (916) 492-3500

A copy of the Petition to Participate must also be submitted to the contact person for this hearing (listed above). For further information, please contact the Office of the Public Advisor.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Assembly Bill 2984, Chapter 203, Statutes of 2002, authorizes the issuance of a surplus line broker and special lines' surplus lines broker license to non-residents that is equal in scope to that of residents, effective January 1, 2003. To effectively regulate the activities of these non-resident licensees, the Commissioner must establish record keeping requirements for the insurance transacted on California risks. Current record keeping regulations set forth in Title 10, California Code of Regulations, Sections 2190 through 2190.8 apply only to resident surplus line brokers and resident special lines' surplus lines brokers and do not address the record keeping requirements of these production agencies when holding a non-resident license.

The proposed amendments to the existing regulations establish the record keeping requirements of non-resident surplus line brokers and special lines' surplus lines brokers as contemplated in Assembly Bill 2984 and in accordance with the provisions of California Insurance Code (CIC), Division 1, Part 2, Chapter 6, Sections 1767 and 1768. The specific purpose of each amendment and the rationale for the determination that each amendment is reasonably necessary to carry out the purpose for which it is proposed are set forth below.

Section 2190.05 Definitions

Section 2190.05 has been amended to include definitions of resident versus non-resident licensees in an effort to increase clarity in the application of the regulations related to the maintenance and location of records. These definitions are provided in the additions of sections 2190.05(g), (h), (i), and (j).

Section 2190.05(g) adds the definition of the term “resident surplus line broker” which means a person licensed as a California resident under Insurance Code Section 1765 and authorized to do business pursuant to Division 1, Part 2, Chapter 6, Sections 1760 through 1780.

Section 2190.05(h) adds the definition of the term “resident special lines’ surplus lines broker” which means a person licensed as a California resident under Insurance Code Section 1760.5 and authorized to do business pursuant to Division 1, Part 2, Chapter 6, Sections 1760.5 through 1780.

Section 2190.05(i) adds the definition of the term “non-resident surplus line broker” which means a person licensed as a resident surplus line broker in a state or territory of the United States other than California who is licensed as a non-resident in California under Insurance Code section 1765 and authorized to business pursuant to Division 1, Part 2, Chapter 6, Sections 1760 through 1780.

Section 2190.05(j) adds the definition of the term “non-resident special lines’ surplus lines broker” which means a person licensed as a resident special lines’ surplus lines broker in a state or territory of the United States other than California, or the functional equivalent thereof offered by such state or territory, and who is licensed as a non-resident in California under Insurance Code Section 1760.5 and authorized to do business pursuant to Division 1, Part 2, Chapter 6 Sections 1760.5 through 1780.

Sections 2190.1, 2190.2, 2190.3, 2190.4, 2190.5 and 2190.6 are unchanged.

Section 2190.7 Place Where Records Kept

This section is amended in subsection (a) to include the content and location for required record keeping for both resident and non-resident surplus line brokers and special lines’ surplus lines brokers. As amended, this section sets forth that the required records of non-resident surplus line brokers and non-resident special lines’ surplus lines brokers be maintained in the principal office in the state or territory of the United States in which he or she holds a resident license to act in either of these capacities. This amendment is consistent with the location of record keeping described in Insurance Code Section 1768 and further defined in Insurance Code Section 1767.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS:

The regulations do not impose any mandate on local agencies or school districts.

COMPARABLE FEDERAL LAW

There are no comparable existing federal regulations or statutes.

LOCAL MANDATE DETERMINATION

The Insurance Commissioner has initially determined that the proposal will not result in any new program mandates on local agencies or school districts.

COST OR SAVINGS TO STATE OR LOCAL AGENCIES / SCHOOL DISTRICTS / FEDERAL FUNDING

The Insurance Commissioner has initially determined that the proposal will not result in any cost or significant savings to any state agency or costs or savings to any local agency or school district for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement, or in other nondiscretionary costs or savings to local agencies. Nor will the proposal affect federal funding to the state.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Insurance Commissioner has initially determined that the proposal will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This proposal will have no effect on the creation or elimination of jobs in California, the creation of new businesses, the elimination of existing businesses in California, or the expansion of businesses in California.

COST IMPACT ON PRIVATE PERSONS OR ENTITIES

The Commissioner is not aware of any cost impacts that a representative private person or business would incur in reasonable compliance with the proposed action.

EFFECT ON SMALL BUSINESS

This regulation may effect small business.

IMPACT ON HOUSING COSTS

The Insurance Commissioner has initially determined that the proposal will not affect housing costs.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposal would not mandate the use of specific technologies or equipment.

ALTERNATIVES

The Insurance Commissioner must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The agency invites interested persons to present statements or arguments with respect to required record keeping for non-resident surplus line brokers and special lines' surplus lines brokers at the scheduled hearing or during the written comment period.

PLAIN ENGLISH

The proposed regulations are written in plain English.

TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared an Initial Statement of Reasons addressing record keeping requirements for non-resident surplus line brokers and special lines' surplus lines brokers, in addition to the Informative Digest included in this notice. The text of the regulation, Initial Statement of Reasons, and this Notice of Proposed Action are available for inspection or copying, and will be provided at no charge upon request to a contact person listed above. Further details of the proposed regulations are on file with the Commissioner and available for review as set forth below.

In addition, the Final Statement of Reasons, once prepared, will be made available through the contact persons listed above.

ACCESS TO RULEMAKING FILE

Any interested person may inspect a copy of or direct questions about the proposed regulations, the statement of reasons, and any supplemental information contained in the rulemaking file by contacting the contact person listed above. **By prior appointment**, the rulemaking file is available for inspection at 300 Capitol Mall, 17th Floor, Sacramento, California 95814, between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday.

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest, Initial Statement of Reasons, and proposed text is being sent to all persons on the Insurance Commissioner's mailing list.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Initial Statement of Reasons, proposed text, and this Notice of Proposed Action will be published online and may be accessed through the Department's website at www.insurance.ca.gov under the Quick Hits heading of Legal Information, subheading Proposed Regulations.

AVAILABILITY OF MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Commissioner may adopt the proposed regulations substantially as described in the notice. If the Commissioner makes modifications which are sufficiently related to the originally proposed text, he will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before he adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the contact persons listed above. The Commissioner will accept written comments on the modified regulations for 15 days after the date on which they are made available.

JOHN GARAMENDI
Insurance Commissioner

Dated: August 27, 2003

By: _____/s/_____
Denise Yuponce
Staff Counsel